

REMARKS

Claims 65-85 are pending in the Application. Claims 1-64 have been previously canceled, and claims 65-85 have been objected to/rejected. In response to Examiner's rejections, independent claims 65, 77 and 83, as well as dependent claim 79, have been amended to more accurately reflect the patentably distinct elements of the present Application. Support for the amendments is found in FIGs. 5-10, as well as paragraphs 89-184. Dependent claim 73 has been canceled to eliminate a redundancy in claims. No new matter has been included. It is believed that the amendments as presented herein, as well as the remarks below, address each of the Examiner's objections and rejections of the claims.

Applicant respectfully requests, therefore, the Examiner consider the amendments and arguments set forth herein, and that a Notice of Allowance be issued for the new claims 65-72, and 74-85

Claim Rejection – 35 U.S. C. § 103(a)

Claims 65-66 and 71-75 are rejected under 35 U.S. C. § 103(a) as being unpatentable over Shaffer (US 6,411,207) ("Shaffer") in view of McCann et al (US 5,740,037) ("McCann"). In response to these rejections, independent claim 65 has been amended to more clearly articulate the patentably distinct elements of the present Application. Accordingly, Applicant respectfully disagrees with and traverses the rejection.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), three basic criteria **must** be met:

(a) **there must be some suggestion or motivation**, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;

(b) there must be a **reasonable expectation of success; and**

(c) **the prior art reference** (or references when combined) ***must teach or suggest all the claim limitations.*** The ***teaching or suggestion*** to make the claimed combination **and the *reasonable expectation of success*** ***must both be found in the prior art, and not based on Applicant's disclosure...*** (emphasis added) MPEP § 2143.

As noted above, the PTO has the burden of establishing a prima facie case of obviousness under 35 USC §103. The Examiner must show that some reason to combine the elements with some rational underpinning that would lead an individual of ordinary skill in the art to combine the relevant teachings of the references. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 75 USLW 4289, 82 U.S.P.Q.2d 1385, 07 Cal. Daily Op. Serv. 4654, 20 Fla. L. Weekly Fed. S 248 (U.S. Apr 30, 2007) (No. 04-1350); *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). Therefore, a combination of relevant teachings alone is insufficient grounds to establish obviousness, absent some reason for one of ordinary skill in the art to do so. *Fine* at 1075. In this case, the Examiner has not pointed to any cogent, supportable reason that would lead an artisan of ordinary skill in the art to come up with the claimed invention. In addition, it must be remembered that “***If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the reference are not sufficient*** to render the claims prima facie obvious.” *In re Ratti* 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (comment added). Neither Shaffer, nor the combination of Shaffer and McCann, meets any of the three criteria detailed above.

A large number of devices may exist in the prior art where, if the prior art is disregarded as to its content, purpose, mode of operation and general context, the several elements claimed by the Applicant, if taken individually, may be disclosed. However, the important thing to recognize is that the reason for combining these elements in any way to meet Applicant's claims only becomes obvious, if at all, when considered from hindsight in the light of the application disclosure. The Federal Circuit has stressed that the “decision maker must step backward in time and into the shoes worn by a person having ordinary skill in the art when the invention was unknown and just before it was made.” *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566

(Fed. Cir. 1987). To do otherwise would be to apply hindsight reconstruction, which has been strongly discouraged by the Federal Circuit. *Id.* at 1568. Respectfully, “it is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious”; *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1141, 227 USPQ 543, 550 (Fed. Cir. 1985); *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)

“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983).

Therefore, without some reason in the references to combine the cited prior art teachings, with some rational underpinnings for such a reason, the Examiner’s conclusory statements in support of the alleged combination fail to establish a prima facie case for obviousness. See, *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 75 USLW 4289, 82 U.S.P.Q.2d 1385, 07 Cal. Daily Op. Serv. 4654, 20 Fla. L. Weekly Fed. S 248 (U.S. Apr 30, 2007) (No. 04-1350), (obviousness determination requires looking at “whether there was an apparent reason to combine the known elements in the fashion claimed...,” citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” *KSR* at 14).

With regard to rejected claim 65, the Examiner is generally correct that Shaffer discloses a personal alert device that could be considered a “self-contained security and surveillance system”, however, the structure and cooperation of structure of the Shaffer device is significantly more simplistic and limited in its functionality than the invention of the present disclosure. Shaffer simply provides a plurality of sensors that detect a change or delta parameter value in the surrounding environment. The delta value is transmitted to a

processor as a potential threat, and the processor simply prepares and transmits an alert message.

By contrast, the present Application discloses a system that not only detects a *change* in the user's environment, but also detects *emitted* threat data that may or may not be representative of a change, but is most certainly representative of a threat. Unlike Shaffer, the present invention can display visual data representative of images in the environment, either before or after image processing. The invention of the present disclosure includes a sophisticated and miniaturized control module that performs complex data processing ranging from gain control to image manipulation and modification, taking into account multiple data inputs not anticipated or disclosed by Shaffer (e.g. GPS data). It is the ability of the present Application to integrate a plurality of sensors, from environmental sensors to multi-spectral imagers, and to process and manipulate the many varieties and quantities of data received that renders the present invention novel and unique.

While Fig. 2 of the Shaffer patent discloses additional sensors, it does not disclose or anticipate data subsystems or modules that are not directly related to threat detection, such as a GPS. Further, the simple processor in Shaffer is intended solely to generate alert messages, and it cannot process, modify and manipulate data in the manner disclosed by the current Application.

The inclusion of McCann does little if anything to address the shortcomings of Shaffer described above. While McCann discloses certain additional capabilities, such as a GPS system, and a somewhat more expansive processing capability, the component structures and functionality in McCann fall well short of the present invention. Data processing in McCann is more accurately described as data organization, and there is no suggestion in McCann to modify, manipulate and display data in the manner suggested by Applicant. It is clear, therefore, that neither Shaffer nor McCann, nor a combination of the two,

teach, suggest or disclose all of the claims limitations of the present amended Application.

Additionally, there is no suggestion or motivation in either Shaffer or McCann to combine the references as proposed by the Examiner. In fact, such a combination is counter-intuitive in light of the very different functions performed by the two inventions. Further, there can be no reasonable expectation of success given the fact that neither invention claims a processor or processing capability even remotely comparable to that of the present disclosure. Even the Examiner notes that the best a Shaffer-McCann combination can deliver is “a visual message displayed on the display or an audible speech message” The capabilities of the current invention are substantially advanced and patentably distinct from the cited art.

Dependent claims 66 and 71-75 depend from amended independent claim 65, and therefore benefit from the arguments set forth above. Further, certain of the dependent claims disclose patentably distinct elements not found in either cited reference. For example, neither Shaffer nor McCann disclose the use of an RF probe, and the prior art systems are not capable of receiving, processing and using such data. As such, Applicant respectfully requests that the rejection of claims 65-66 and 71-75 be withdrawn and a Notice of Allowance be issued.

Claims 67 is rejected under 35 U.S. C. § 103(a) as being unpatentable over Shaffer (US 6,411,207) (“Shaffer”) in view of McCann et al (US 5,740,037) (“McCann”) in further view of Warner (US 6,255,650) (“Warner”). Applicant respectfully disagrees with and traverses the rejection.

Claim 67 depends from amended independent claim 65, and therefore benefits from the arguments for patentability set forth above. Additionally, while Warner discloses an imager that is an “un-cooled focal plane array”, the system in Warner is solely for thermal imaging, and is not a multi-spectral device like the present invention. As such, the processing capability in Warner is severely

limited to color coding classifications of thermal imagery. Warner does not teach, suggest or disclose either multi-sensor functions or complex data processing. As such, the rejection of claim 67 should be withdrawn as well.

Claims 68-70 are rejected under 35 U.S. C. § 103(a) as being unpatentable over Shaffer (US 6,411,207) ("Shaffer") in view of McCann et al (US 5,740,037) ("McCann") in further view of Wooten et al (US 5,332,176). As with the other dependent claims discussed above, claims 68-70 are patentably distinct by virtue of their dependence from claim 65. Further, the inclusion of Wooten does not remedy the failure of Shaffer, etc. to teach, suggest or disclose the invention of the present Application as amended. Stated differently, the receipt and processing of data in Wooten is severely limited in comparison with the present Application, and given the complex nature of multi-spectral data processing, it should not be said that the combination of Shaffer, McCann and Wooten anticipates Applicant's disclosure.

Claims 65 and 76-85 are rejected under 35 U.S. C. § 103(a) as being unpatentable over Shaffer (US 6,411,207) ("Shaffer") in view of McCann et al (US 5,740,037) ("McCann") in further view of Kelly (US 5,986,803) ("Kelly"). Applicant respectfully disagrees with and traverses the rejection.

In response to these rejections, independent claims 65, 77 and 83 have been amended to more clearly articulate the patentably distinct elements of the present Application, to wit the control module and its complex processing features/capabilities. Dependent claims 76, 78-82, and 84-85 depend from independent claims 65, 77 and 83, respectively, and therefore benefit from the patentability arguments set forth above. Further, dependent claim 79 has been amended to clearly disclose and claim critical data processing features not found in the prior art.

As with the other combinations of prior art discussed above, Kelly, alone or in combination with others, does not teach, suggest or disclose all the claims

limitations of Applicant's invention. As such, it cannot be said to anticipate the present invention. Further, there can be no expectation of success when the processing means and capabilities of the prior art do not include the complex signal processors, image modifiers, and data integrators of the present Application as amended.

CONCLUSION

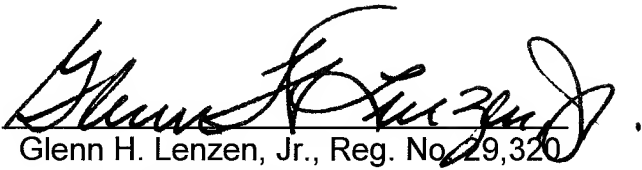
For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references independently result in, teach or suggest Applicant's claimed invention as amended, nor does any combination of the prior art yield the requisite expectation of success. In view of the above Amendments and Remarks, Applicant respectfully solicits a Notice of Allowance for pending claims 65-72 and 74-85. Should any issues remain, the Examiner is encouraged to telephone the undersigned attorney.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

With regard to any fees due in connection with this Amendment, the Commissioner is authorized to charge any additionally required fees to deposit account TBD referencing the Attorney docket number TBD.

Respectfully submitted,

By:



Glenn H. Lenzen, Jr., Reg. No. 29,320

KUTAK ROCK LLP

1801 California Street, Ste 3100

Denver, CO 80202-2626

303.292.7897 (direct)

303.292.7799 (facsimile)